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BROOKSBANK & ASSOCIATES  
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Attorney for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT STATE OF NEVADA  
COUNTY OF WASHOE, STATE OF NEVADA

Case No.: CV07-01408

Dept. No.: 3

TARGET NATIONAL BANK,  
Plaintiff,

vs.  
MARY BROOKSBANK,  
Defendant.

MARY B. BROOKSBANK,  
Counterclaimant, Third Party Plaintiff

vs.  
TARGET NATIONAL BANK, MANN  
BRACKEN, LLC, PATENAUDE & FELIX,  
APC, WESLEY U. VILLANUEVA, ESQ.,  
Counterdefendant, Third Party

Defendants.

MARY BROOKSBANK, by and through her attorney, Brooksbank & Associates,

answers the complaint filed herein as follows:

1. Deny.

2. Admit.

3. Deny.

4.

Defendant is without sufficient information and belief to admit or deny the

allegations contained in paragraph four of the Complaint and upon that basis, denies the same.

For such other and further relief as the court deems just and proper.

3.

case.

2. That defendant be awarded her attorney's fees and costs incurred to defend this
1. The complaint be dismissed with prejudice.

WHEREFORE, defendant prays that:

17. Unauthorized charges.
16. Misapplication of Payments.
15. Breach of covenant of good faith & fair dealing.
14. Deception & fraudulent Lending & Collection Practices.
13. Unconscionable acts and practices.
12. Unclean hands.
11. Failure to mitigate damages.
10. Duress.
9. Negligence.
8. Unfair and Deceptive Trade Practices.
7. Malicious prosecution.
6. Abuse of process.
5. Set off.
4. Breach of contract.
3. Fraud in the inducement.
2. Fraud.
1. Failure to state a claim for which relief can be granted.

# AFFIRMATIVE DEFENSES

7. Deny.
6. Deny.

5. Defendant is without sufficient information and belief to admit or deny the allegations contained in paragraph five of the Complaint and upon that basis, denies the same.

# COUNTERCLAIM/THIRD PARTY CLAIM

Counterclaimant, Third Party Plaintiff Mary Brooksbank, ("Mary") as and for her counterclaim and Third Party claim alleges as follows:

1. Counterclaimant is a consumer as defined in 15 USC §1692a.

2. TARGET NATIONAL BANK, ("TNB"), is a national bank engaged in the consumer credit card business.

3. MANN BRACKEN, LLC ("MANN BRACKEN") is a Georgia law firm engaged in the business of collecting consumer debts and is a debt collector as defined in 15 USC §1692a(6).

4. PATENAUDE & FELIX, APC, ("P&F") is a law firm engaged in the business of collecting consumer debts and is a debt collector as defined in 15 USC §1602a(6).

5. WESTLEY U. VILLANUEVA, ESQ., ("VILLANUEVA") is an attorney engaged in the business of collecting consumer debts, is a debt collector as defined in 15 USC §1692a(6), and is personally liable to Mary for his illegal and abusive debt collection actions.

## FACTS

6. This case addresses the abusive, unfair, deceptive, and fraudulent business practices of TNB, and the illegal debt collection acts and practices of MANN BRACKEN, P&F, and VILLANUEVA.

7. TNB issued a credit card to MARY, at a time when she was not qualified under normal credit practices, had no source of income for repayment, was an unemployed single mother of six minor children.

8. Without any effort to verify her credit worthiness and without any due diligence, TNB issued her a credit card with a \$16,000.00 credit limit, with a \$2,400.00 cash credit limit, fully aware that she was unable to repay any such debt.

9. Contrary to the terms of the account, TNB allowed MARY to utilize cash advance checks on the account to exceed her cash credit limit and essentially max out the account, knowing full well that she had no ability to repay the debt.

10. The account quickly went into default as a result of TNB taking advantage of an unsophisticated consumer.

11. After the account went into default TNB contacted MARY and coerced her to make payments by threatening and scaring her and by misrepresenting the impact TNB has on her credit report, misrepresenting the effect of minimum payments. TNB knew or should have known that she had no ability to continue making payments, and the purpose of TNB was to extract payment, so it could incur additional fees and charges, and allowed the debt to escalate.

12. TNB continued with its deceptive and unfair collection practices concerning "special" offers to bring the account current and concerning credit reporting. TNB failed to disclose material facts concerning the "special" offers, and the true effects of negative credit reporting. TNB made false and deceptive statements and representations about reporting the account as "current" and deceived and misled the consumer with respect to prior negative credit reporting.

13. TNB sent bills and written requests for payment that failed to include TILA disclosures and itemization of charges, even though TNB continued to charge interest, and fees.

14. TNB misrepresented and omitted to disclose material facts and deceived MARY with respect to "charging off" the account, while continuing to charge interest and fees.

15. TNB threatened to place the account with the law firm of MANN BRACKEN to

coerce payment while failing to disclose that MANN BRACKEN was a Georgia law firm whose

only collection activity would be to send two dunning letters and has never sued anyone in

Nevada. TNB also failed to disclose that MANN BRACKEN is not licensed in Nevada, cannot

file suit in Nevada, misrepresented the immanency of suit and failed to disclose the true effect of

the threat, making the threat deceptive, all in an effort to coerce additional payments to run up additional fees and charges that TNB knew MARY could not pay.

16. TNB eventually referred the account to MANN BRACKEN who sent an initial dunning letter.

17. The letter contained a 15 USC §1692g validation notice and MARY responded by notifying MANN BRACKEN that she was represented by an attorney and disputed the debt.

18. MANN BRACKEN ignored the notice and continued to collect the account without first obtaining and sending the consumer verification documentation, as required by the

FDCPA, and attempted to contact the consumer even though it knew she was represented by an attorney, also a per se FDCPA violation.

19. MANN BRACKEN'S letters are form letters which contain numerous misrepresentations and failures to disclose material facts.

20. When MANN BRACKEN was unable to collect the debt and before providing verification, it forwarded the account to P&F and VILLANUEVA for further collection. The

referral constitutes collection activity before verifying the account and is another violation of the FDCPA.

21. P&F and VILLANUEVA sent a dunning letter to MARY even though they knew she was represented by an attorney. The letter contained a 1692g notice and MARY responded

by sending notice to P&F and VILLANUEVA that she disputed the debt. In response, P&F and VILLANUEVA sent her a one page document that they obtained from MANN BRACKEN. The

document did not include any information sufficient to satisfy their verification obligation, rather the document merely provided a claimed balance which was different than the amount

previously claimed. P&F and VILLANUEVA have never provided any documentation showing the charges to the account, application of payments by date and amount, and the fees and charges

to the account.

22. Rather than provide the required verification documentation, P&F and VILLANUEVA continued to collect the account in violation of the FDCA. Upon information and belief, this is a common business practice of P&F and VILLANUEVA and is their typical response to verification requests.

#### CLASS ALLEGATIONS

23. This action is brought as a class action. The class is tentatively defined as all consumers who during the statutory period were subjected to the same or similar business practices of TNB, all consumers whose accounts were assigned from TNB to MANN BRACKEN during the statutory period, and all accounts assigned from MANN BRACKEN to P&F and VILLANUEVA, and or from TNB, to P&F and VILLANUEVA, during the statutory period. MARY reserves the right to redefine the class in light of discovery.

24. The class is so numerous that joinder of all members is impractical.

25. There are questions of law and fact common to the class, which predominate over any questions affecting only individual class members. The principal questions are whether the business practices of TNB violated NRS Chapter 598, and whether the repetitive business practices of MANN BRACKEN and P&F and VILLANUEVA violate the FDCA and NRS Chapter 598.

26. There are no individual claims that would materially predominate over the class claims.

27. MARY will adequately protect the interests of the class. She is committed to vigorously litigating the case. She is greatly annoyed at being the victim of the illegal business practices and wishes to see the wrong remedied. She has retained experienced counsel who has extensive knowledge concerning illegal business and debt collection practices.

28. MARY'S claim is typical of the class.

represented by an attorney. (1692 c(a)(2)).

(a) contacting the consumer when the debt collector knows that the consumer is

15 USC §1692 in the following respects:

34. MANN BRACKEN violated the FAIR DEBT COLLECTION PRACTICE ACT,

### CLAIMS AGAINST MANN BRACKEN

dealing inferred in all consumer contracts.

33. The acts and omissions of TNB violated the covenant of good faith and fair

consumer to an award of punitive damages.

32. The actions of TNB are statutorily defined as "consumer fraud" entitling the

damages, attorneys fees and costs.

fraud as statutorily defined as a violation of NRS 598.0915 to 598.0925, entitling her to recover

31. NRS 41.600 provides a consumer with a private right of action for consumer

transaction;

(d) 598.0923(4) knowingly using coercion duress or intimidation in a consumer

sale or lease of goods or services;

(c) 598.0923(2) knowingly failing to disclose material facts in connection with the

a party to a transaction;

(b) 598.092(8) knowingly misrepresenting the legal rights, obligations or remedies of

in an effort to coerce payment and profit;

(a) 598.0915(15) knowingly making false representations in a consumer transaction

respects:

30. The acts and practices of TNB violated NRS Chapter 598 in the following

### CLAIMS AGAINST TNB

controversy.

29. A class action is a superior method for the fair and efficient adjudication of this

entitling the consumer to an award of punitive damages.

37. The acts of MANN BRACKEN are statutorily defined as "consumer fraud" recover damages, attorneys fees and costs.

fraud as statutorily defined as a violation of NRS 598.0915 to 598.0925 entitling the consumer to

36. NRS 41.600 provides the consumer with a private right of action for consumer

(e) 598.0923(4) using coercion duress or intimidation in a consumer transaction.

goods or services;

(d) 598.0923(3) knowingly violating a federal statute relating to the sale or lease of

sale or lease of goods or services;

(c) 598.0923(2) knowingly failing to disclose material facts in connection with the

a party to a consumer transaction;

(b) 598.092(8) knowingly misrepresenting the legal rights obligations or remedies of

(a) 598.0915(15) knowingly making false representations in a consumer transaction;

respects:

35. The acts and practices of MANN BRACKEN violated NRS 598 in the following

timely written notice of dispute. (1692d,e,f).

(g) misrepresenting that it would provide verification if the consumer provided a

that the consumer disputed the debt in any threatened reporting. (1692c,d,e,f).

(f) misrepresenting the effect of credit reporting and failing to include a statement

had previously been charged off by the creditor. (1692d,e,f).

(e) misrepresenting that the account was approaching "charge off" when the account

owed. (1692d,e,f).

(d) misrepresenting the amount of the debt and attempting to collect amounts not

(c) continuing to collect the debt after receiving a timely dispute notice. (1692g).

(b) failing to provide verification after the consumer disputed the debt. (1692g)



CLAIMS AGAINST P&F AND VILLANUEVA

38. P&F and VILLANUEVA violated the FDCPA in the following respects:

- (a) failing to provide verification documentation in response to a consumer's timely dispute notice. (1692g).
- (b) continuing to collect the debt without first providing verification. (1692g).
- (c) misrepresenting the character, amount or legal status of the debt. (1692e).
- (d) attempting to collect amounts not owed. (1692 d,e,f).
- (e) misrepresenting their relationship and communications with the creditor. (1692 d,e,f).
- (f) misrepresented their authority to file suit. (1692e).
- (g) misrepresenting and failing to disclose the impact of a judgment, the exemptions available to the consumer and the immanency of suit for purposes of coercing payment. (1692d,e,f).

(h) misrepresented that they would provide verification of the debt when the only document they ever intended to provide was a one page unsubstantiated balance they obtained from MANN BRACKEN without any proof of the underlying charges, credits and debits. (1692d,e,f).

(i) failing to disclose illegal kickbacks to MANN BRACKEN. (1692 d,e,f).

(j) engaging in abusive debt collection practices against the former spouse of attorney Brooksbank for purposes of revenge and vindictiveness for prior FDCPA case counsel has pursued against P&F and VILLANUEVA. (1692d,e,f).

P&F and VILLANUEVA'S actions and omissions violated NRS Chapter 598 in the following respects:

(a) 598.0915(15) knowingly making false representations in a consumer transaction;

(b) 598.092(8) knowingly misrepresenting the legal rights obligations or remedies of a party to a consumer transaction;

(c) 598.0923(2) knowingly failing to disclose material facts in connection with the sale or lease of goods or services;

(d) 598.0923(3) knowingly violating a federal statute relating to the sale or lease of goods or services;

(e) 598.0923(4) using coercion duress or intimidation in a consumer transaction.

36. NRS 41.600 provides the consumer with a private right of action for consumer fraud as statutorily defined as a violation of NRS 598.0915 to 598.0925 entitling the consumer to recover damages, attorneys fees and costs.

37. The acts of P&F and VILLANUEVA are statutorily defined as "consumer fraud" entitling the consumer to an award of punitive damages.

WHEREFORE, Mary Brooksbank respectfully prays as follows:

1. That the complaint be dismissed with prejudice;

2. That judgment be entered against TNB for damages, attorneys fees and costs for TNB's violation of NRS Chapter 598, and the covenant of good faith and fair dealing;

3. That judgment be entered against MANN BRACKEN, and P&F and VILLANUEVA for actual damages, statutory damages, attorneys fees and costs, for their FDCPA violations;

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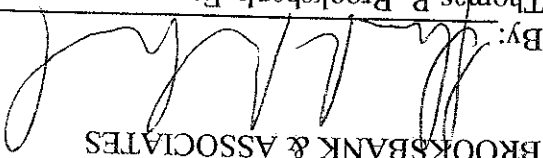
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4. That judgment be entered against MANN BRACKEN, P&F and VILLANUEVA, for damages, attorneys fees and costs for their violations of NRS 598.
5. For an award of attorneys fees and costs; and
6. For such other and further relief as the court deems just and proper.

Dated this 28 day of October, 2007.

BROOKSBANK & ASSOCIATES

By: 

Thomas R. Brooksbank, Esq.

775/329-5230

Attorney for Defendant and Counterclaimant

CERTIFICATE OF MAILING

I hereby certify that on the 29<sup>th</sup> day of October, 2007, I deposited for mailing at the post office at Reno, Nevada, in a sealed envelope, postage fully paid, a true copy of the foregoing ANSWER COUNTERCLAIM and THIRD PARTY CLAIM to Westley Villanueva, Esq., Patenaude & Felix, 1771 E. Flamingo Rd., Ste. 112A, Las Vegas, NV 89119.

